

## **Attachment B**

10-22-04 JONWRM

### **Draft 7 of MOU Dated 10-22-04 With Changes Relative to Draft 5 dated 8-19-04**

### **Memorandum of Understanding Regarding Water Transmission System Capacity Allocation During Temporary Impairment**

This Memorandum is made by and between the following public agencies:

SONOMA COUNTY WATER AGENCY (Agency)  
CITY OF COTATI (Cotati)  
CITY OF PETALUMA (Petaluma)  
CITY OF ROHNERT PARK (Rohnert Park)  
CITY OF SANTA ROSA (Santa Rosa)  
CITY OF SONOMA (Sonoma)  
FORESTVILLE WATER DISTRICT (FWD)  
NORTH MARIN WATER DISTRICT (NMWD)  
VALLEY OF THE MOON WATER DISTRICT (VOMWD)  
MARIN MUNICIPAL WATER DISTRICT (MMWD)  
TOWN OF WINDSOR (Windsor)

#### **SECTION 1 - RECITALS**

(a) The Sonoma County Water Agency (Agency) was created by California state legislation (Statutes of 1949, Chapter 994 as amended). The Agency operates and maintains a water supply and transmission system (Transmission System) authorized by the Eleventh Amended Agreement for Water Supply (Eleventh Amended Agreement) between and among the Agency and eight public entities: Cotati, Petaluma, Rohnert Park, Santa Rosa, Sonoma, FWD, NMWD, VOMWD, dated October 25, 1974 and last amended January 26, 2001, by means of which water is furnished to the parties thereto. The Agency furnishes water to Windsor pursuant to the application for water service approved on April 1, 1987. Windsor is one of the Agency's "other Agency customers" as that term is defined in the Eleventh Amended Agreement. The Agency furnishes water to MMWD pursuant to the Third Amended Offpeak Water Supply Agreement and Agreement for Sale of Water Between the Sonoma County Water Agency and Marin Municipal Water District both of which were last amended by the Supplemental Water Supply Agreement dated January 25, 1996 (MMWD Agreements).

(b) The Agency has proposed a Water Supply and Transmission System Project (WSTSP). As of the date of this agreement, the Agency is preparing a supplemental environmental impact

report for the project. The objective of the WSTSP is to provide a safe, economical, and reliable water supply to meet the defined future needs of the Agency's service area. If the WSTSP EIR is approved by the Agency's Board of Directors and the new facilities described therein are fully permitted, constructed and operational, the WSTSP will increase the amount of water that can be diverted by the Transmission System from the Russian River (a combination of re-diversion of stored water and direct diversion of available flows) to approximately 101,000 acre-feet per year, and increase the Transmission System's delivery capacity from 92 million gallons per day (mgd) to 149 mgd.

(c) Due to delays in implementation of the WSTSP, such as litigation and regulatory constraint delays, all of the facilities authorized by the Eleventh Amended Agreement have not been constructed. Limitations exist in the existing Transmission System, which may preclude reliable delivery of some of the delivery entitlements enumerated in Sections 3.1 and 3.2 of the Eleventh Amended Agreement.

(d) On December 7, 1999, 2004 the Board of Directors of the Agency adopted Resolution No. 99-1564 declaring

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~~that the reliable summertime water production capacity of the Transmission System is currently temporarily impaired by being limited to an average reliable monthly capacity of 84 mgd.~~ One of the projects authorized by the Eleventh Amended Agreement as well as prior agreements is Collector No. 6 - a portion of the 20 mgd of collector capacity defined in Section 1.1(s) of said agreement. As of the date of this MOU, Collector No. 6 is under construction and is projected to be placed in service by the summer of 2005. This project and its connecting pipeline are designed to achieve a reliable monthly summertime production capacity of 92 mgd from the Transmission System.

(e) The highest Peak Demand measured during an Agency billing month was 80 mgd in August 2000. Although year-to-year increases in Peak Demand are highly variable due to variations in summer weather, the average annual increase in Peak Demand historically has been approximately 2 mgd. Due to the temporary impairment of the Transmission System capacity, the water production capacity of the Transmission System may be exceeded during Summer Months if Peak Demand continues to increase as it has historically.

(f) Section 3.5 of the Eleventh Amended Agreement provides how water will be apportioned in the event of a temporary impairment of the capacity of the Transmission System.

(g) Since August of 2001, the parties to this MOU have been negotiating a new agreement, termed the Restructured Agreement for Water Supply (Restructured Agreement) to replace the Eleventh Amended Agreement.

(h) The parties recognize that in the near term during periods of high demand usually caused by high temperatures, the deficiency in reliable Transmission System capacity may cause~~will generally manifest itself during periods of high demand usually caused by high temperatures~~ with potable water storage tank levels to become unacceptably low and unable to~~being unable to satisfactorily~~ recover in response to each day's demand. The parties further recognize that the best interim management option to counter and reverse declining storage tank water levels is for the Agency's customers to: (1) use Standby Local Supply Production Capacity and/or (2) reduce demand on the Transmission System by shifting or temporarily delaying key large components of demand, such as large irrigation accounts on automatic control systems.

## SECTION 2 - DEFINITIONS

The terms used in this MOU that are defined in Section 1.1 of the Eleventh Amended Agreement shall have the meaning set forth in said Section 1.1. In addition, the following terms are defined for this MOU:

- (a) "Standby Local Supply Production Capacity" means the potable water capacity from surface supply lakes or wells that the parties to this agreement (other than the Agency) can produce from their own facilities. Such production capacity may be: (1) sources of supply permitted by the California Department of Health Services for regular and normal use but are standing idle or are not being fully utilized at the time a hot spell event occurs or, (2) well water sources which are permitted for use for short periods of time during emergencies.
- (b) "Peak Demand" means the average day demand in mgd during the maximum use summer month.
- (c) "Special Operations Group" is the group described in Section 5 hereof.
- (d) "Summer Months" means June, July, August and September. Measurements of use during Summer Months are based on an Agency billing month, which may vary by several days from the calendar period of an actual month.
- (e) "Periods of Temporary Impairment," means the Summer Months occurring during the term of this MOU when the Transmission System is capable of reliably delivering an average of no more than~~between 84 mgd and~~ 92 mgd in a month, as solely determined by the Agency.

## SECTION 3 - PURPOSE

The purpose of this MOU is to establish an equitable allocation of 92 mgd of water from the Transmission System during Periods of Temporary Impairment and to implement a special operational response in order to optimize allocation of the available supply, coordinate Standby Local Supply Production Capacity, to avoid the necessity for the imposition of the water delivery

curtailments prescribed by Section 3.5 of the Eleventh Amended Agreement, or, if adopted, the Restructured Agreement, to provide greater certainty for water contractors, and to set forth the necessary cooperative actions and planning to mitigate or avoid the consequences of Periods of Temporary Impairment. During ~~the p~~Periods of this MOU ~~Temporary Impairment and during the 12 month period following the date this MOU is terminated, the penalty provisions of ,the express provisions of this MOU shall supersede Sections 3.1 (c) and (d) any conflicting provisions~~ of the Eleventh Amended Agreement or, if adopted, Sections 3.1(c) and (d) of the Restructured Agreement shall not apply . All other terms and conditions of the Eleventh Amended Agreement or, if adopted, the Restructured Agreement, shall remain in full force and effect. In the event the Restructured Agreement becomes approved during the term of this MOU, the allocations set forth in Table 1 of this MOU shall continue to apply during the term of this MOU and shall govern allocation of water during Periods of Temporary Impairment.

#### SECTION 4 - TEMPORARY DELIVERY CAPACITY ALLOCATION

- (a) The purpose of this MOU is set forth in Section 3. It is not the intent of this MOU to diminish the delivery entitlements set forth in Sections 3.1, 3.2 and 3.3 of the Eleventh Amended, or if adopted, Sections 3.1, 3.2 and 3.3 of the Restructured Agreement; nor shall expansion of the average daily potable water capacity in mgd that the parties to this MOU, other than the Agency, can reliably produce throughout the Summer Months from their own facilities, or the implementation of any water conservation action, program or project or implementation or expansion of any recycled water project that reduces potable water demand on the Transmission System by any party to this MOU diminish said delivery entitlements.
- (b) During the term of this MOU, whether or not the Restructured Agreement is fully executed, each of the parties to this MOU agrees to use its best efforts to limit its demand on the Transmission System during Periods of Temporary Impairment to the applicable rates set forth in Table 1.

Table 1 Peak Demand Allotments for Summers of 2005 through 2008	
	Mgd
Cotati	1.9
Petaluma	17.1
Rohnert Park	5.4
Sonoma	3.8
Santa Rosa	39.1
Town of Windsor	1.5
Valley of the Moon WD	4.9
Forestville WD	0.9

Other Agency Customers (1)	1.7
North Marin Aqueduct (2)	15.7
Total	92.0
Notes: (1) Forestville WD and Town of Windsor are shown separate from Other Agency Customers. (2) Apportionment of deliveries into the North Marin Aqueduct is governed by the agreement: Intertie Agreement Between NMWD and MMWD dated March 11, 1993.	

(c) During Periods of Temporary Impairment, the liquidated damages provided for in Section 3.3(b) of the Eleventh Amended Agreement, or if adopted Section 3.13 of the Restructured Agreement, shall apply. Liquidated damages will be assessed only if a party takes water from the Transmission System in an amount in excess of its delivery limits as set forth in Sections 3.1, 3.2 and 3.3 of the Eleventh Amended Agreement or, if adopted, Sections 3.1, 3.2 and 3.3 of the Restructured Agreement. The parties further agree, however, that the provisions of Sections 3.1(c) and (d) of the Eleventh Amended Agreement or, if adopted, Sections 3.1(c) and (d) of the Restructured Agreement shall not apply during the 12-month period following the date this MOU is terminated.

(d) Table 1 may be amended by the affirmative vote of more than fifty percent (50%) of the total weighted voting power which must be cast by at least seven of the parties to this MOU, or their authorized representatives. For the purpose of this paragraph, all of the parties to the Eleventh Amended Agreement, except the Agency, shall have weighted voting power proportional to their average during month water delivery entitlement expressed in mgd as set forth in Section 3.1 of the Eleventh Amended Agreement. The Agency, Windsor and MMWD shall have weighted voting power proportional to 1.2 mgd, 1.5 mgd and 3.8 mgd, respectively. Should the parties hereto that have Table 1 allocations less than the delivery entitlements provided in Sections 3.1, 3.2 and 3.3 of the Eleventh Amended Agreement or, if adopted, Sections 3.1, 3.2 and 3.3 of the Restructured Agreement require more transmission system capacity ~~water~~, same shall be accommodated to the extent that transmission system capacity ~~water~~ supplied by the Agency is available.

(e) Table 1 does not address limitations in aqueduct capacity. The maximum capacity downstream of Ely Booster is limited and, consistent with the provisions of the Eleventh Amended Agreement, flows are subject to detailed operating procedures set by Petaluma, NMWD, MMWD and the Agency. It is the intent of these procedures to preserve the depth of water storage in the Agency's Kastania Tank above 15 feet for the benefit of Petaluma. Maximum capacity of the Annadel-Sonoma Aqueduct is limited and flows are subject to detailed operating procedures set by Sonoma, VOMWD and the Agency. It is the intent of these procedures to preserve storage in the Agency's Sonoma Tanks and to assure optimal flow and pressure conditions in the Sonoma Aqueduct.

(f) The parties agree that consideration of construction of the following facilities are of the highest priority; and, subject to environmental review, funding and all applicable laws and regulations, including the applicable conditions of the Eleventh Amended Agreement [or, if adopted, the Restructured Agreement](#), the Agency agrees to use best efforts to cause these planned facilities to be completed so that the following objectives can be met at the earliest possible date:

1. To alleviate shortages in diversion capacity, construction of Collector 6.
2. To alleviate shortages south of Ely Booster Station on the Petaluma Aqueduct, construction of the South Transmission System Project.
3. To alleviate shortages south of Eldridge Tanks on the Sonoma Aqueduct, construction of the aqueduct segment between Eldridge Tanks and Madrone Road.
4. To alleviate shortages south of Oakmont, construction of a portion of the Annadel–Sonoma pipeline from Pythian Road to Henno Road pipeline.
5. To alleviate storage shortages, construction of Kawana Tank II facilities.

(g) The parties further agree that it is a high priority to achieve and maintain 20 mgd of standby pump and collector capacity as authorized by the Eleventh Amended Agreement, and the Agency agrees, subject to environmental review, funding and all applicable laws and regulations, including the applicable conditions of the Eleventh Amended Agreement [or, if adopted, the Restructured Agreement](#), to use best efforts to achieve this objective by completing the necessary facilities at the earliest possible date.

## SECTION 5 – SPECIAL OPERATIONAL RESPONSE

During the term of this MOU, the General Manager or City Manager of each party, or his or her designee, shall designate a representative for a Special Operations Group, which shall meet as frequently as necessary. The Special Operations Group shall be headed by a representative of the Agency and shall be comprised of key operations personnel. The chief mission of the Special Operations Group shall be (1) to optimize coordinated operation of the Transmission System and Local Supply Production Capacity, and (2) to coordinate and implement potential voluntary water demand reductions, for the purpose of meeting the reasonable needs of the Regular Customers and MMWD. The Special Operations Group shall:

1. Identify, quantify and categorize Local Supply Production Capacity facilities of each of the parties.
2. Examine prior weather conditions and other appropriate records and data, and design appropriate responses to various weather scenarios.
3. Identify significant water users whose demand could be temporarily reduced, establish communications with account operations staff, and develop a cooperative voluntary means of reducing demand. Initially this effort should target irrigation sites owned by the parties or other government agencies.

4. Work cooperatively in the event that demands on the transmission system exceed capacity to implement a suitable response based upon use of Local Supply Production Capacity and reducing demands on the transmission system.

#### SECTION 6 – OTHER ~~SPECIAL~~ EFFORTS

- (a) The parties agree to maintain active membership in the California Urban Water Conservation Council and implement the urban water conservation Best Management Practices as established and from time to time amended by said Council.
- (b) Each party hereto expresses its intent ~~to expend special efforts~~ to actively pursue and implement water conservation measures designed to reduce demand on the Transmission System during the Summer Months throughout the term of this MOU. Annually, on a date to be set by the Chairperson of the Water Advisory Committee, the parties hereto shall be surveyed and report in writing and describe specific measures implemented and progress achieved in reducing demand on the Transmission System during the Summer Months.

#### SECTION 7 - WAIVER OF RIGHTS

By signing this MOU, the parties do not waive or relinquish any legal or equitable right that they might otherwise have with respect to any of the actions, activities or obligations contemplated by the Eleventh Amended Agreement or, if executed, the Restructured Agreement, except to the extent specifically superseded by this MOU.

#### SECTION 8 - AMENDMENT OF MOU

Except as expressly authorized in Sections 4(d) and 11, amendments, revisions or modifications to this MOU shall be in writing and shall be executed by all parties to this MOU.

#### SECTION 9 - THIRD PARTY CLAIMS

It is not the intent of the parties to this MOU to create any third party beneficiaries. Any failure to perform under the terms of this MOU shall not create any claim or right by any individual or entity not a party to this MOU.

#### SECTION 10 - ENTIRE AGREEMENT

This writing is intended both as the final expression of agreement between and among the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the MOU, pursuant to Civil Code § 1856. No modification of this MOU shall be effective unless and until such modification is evidenced by a writing signed by all parties or, where expressly authorized herein, by the parties' authorized representative.

## SECTION 11 - TERM OF MOU

The Memorandum of Understanding Regarding Water Transmission System Capacity Allocation During Periods of Temporary Impairment, dated March 1, 2001 shall terminate and this MOU shall become effective upon the signature of the parties hereto and shall remain in effect until September 30, 2008 unless terminated earlier by a vote of more than fifty percent (50%) of the total weighted voting power which must be cast by at least seven of the parties to this MOU.

Voting power shall be the same as defined in Section 4(d) hereof. For the purposes of this section, votes shall be cast by resolution adopted by the governing board of each voting party and shall be delivered to each of the parties hereto. Not later than July 1, 2007, the parties agree to meet, review and consider the reliable capacity of the Transmission System and Local Supply Production Capacity and other pertinent factors, and determine whether or not and under what terms this MOU should be extended. Extension of this MOU [is not subject to weighted voting and](#) shall require the approval of all the parties hereto.



SONOMA COUNTY WATER AGENCY

By: \_\_\_\_\_ Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Deputy County Clerk

CITY OF COTATI

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

CITY OF PETALUMA

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

CITY OF ROHNERT PARK

By: \_\_\_\_\_ Date: \_\_\_\_\_

Mayor

ATTEST:

\_\_\_\_\_  
City Clerk

CITY OF SANTA ROSA

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

CITY OF SONOMA

By: \_\_\_\_\_  
Mayor

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
City Clerk

FORESTVILLE COUNTY WATER DISTRICT

By: \_\_\_\_\_  
President

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary

NORTH MARIN WATER DISTRICT

By: \_\_\_\_\_  
President

Date: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary  
VALLEY OF THE MOON WATER DISTRICT

By: \_\_\_\_\_ Date: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

MARIN MUNICIPAL WATER DISTRICT

By: \_\_\_\_\_ Date: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

TOWN OF WINDSOR

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Mayor

ATTEST:

\_\_\_\_\_  
Town Clerk